



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 7437-99

20 March 2000



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you served on active duty in the Marine Corps from 31 August 1979 to 2 January 1982, when you were discharged pursuant to the sentence of a court-martial, with a bad conduct discharge, based on your conviction of multiple counts of disobedience of a lawful general regulation, and of assaulting fellow Marines. The Board noted that with regard to your conviction, it is limited to taking action on the sentence for the purposes of clemency. The Board was not persuaded that your bad conduct discharge is unjust, or that it should be upgraded as a matter of clemency. It rejected your unsubstantiated contention to the effect that you lacked mental responsibility when you committed the misconduct which resulted in your discharge. It was unable to conclude that you were unfit by reason of physical disability at that time, and noted that even if you did suffer from an unfitting condition, you would not have been entitled to disability retirement or separation, because a punitive discharge takes precedence over disability evaluation processing.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request. As the issues regarding your pay

entitlement does not involve the correction of your record, the Board did not consider them. Questions concerning your pay entitlement should be directed to the Defense Finance and Accounting Service. It should be noted, however, that a service member being separated with a bad conduct discharge is not entitled to payment for unused accrued leave.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director